

SUBURBAN MIDDLESEX  
INSULATION, INC.

CONTRACT NO. V631C-667

VABCA-4740

VA MEDICAL CENTER  
NORTHAMPTON, MASSACHUSETTS

*Joseph A. Camardo, Jr., Esq.*, Auburn, New York, for the Appellant.

*Paul Embroski, Esq.*, Trial Attorney; and *Phillipa L. Anderson, Esq.*, Acting Assistant General Counsel, Washington, D.C., for the Department of Veterans Affairs.

### ORDER DISMISSING APPEAL

1. The Board, in its November 9, 1995 NOTICE OF DOCKETING AND ORDER TO SHOW CAUSE, noted that it appeared from the documents before it that the Appellant submitted its \$222,966.34 claim to the Contracting Officer on October 9, 1995. The following day, the Contracting Officer wrote in response, "your claim was turned over to Department of Veterans Affairs, Office of Inspector General, . . . for criminal investigation." The Board further noted that the *Contract Disputes Act of 1978*, provides the basis for jurisdiction by this Board over any claims made by the Appellant against the Government. Specifically, 41 U.S.C. § 605(c) provides that "[a] contracting officer shall, within sixty days of receipt of a submitted certified claim over \$50,000 - (A) issue a decision; or (B) notify the contractor of the time within which a decision will be issued." In the absence of any communication by the contracting officer which might constitute a decision on a contractor's claim, or the passage of the mandated sixty days, the contractor's claim is not ripe for adjudication and the Board does not have jurisdiction over the claim. *Paragon Energy Corp. v. United States*, 645 F.2d 966, 967 (Ct. Cl. 1981); *Saturn Construction Company*, VABCA No. 3229, 91-3 BCA ¶ 24,151 at 120,859, *aff'd. per curiam*, 991 F.2d 810 (Fed. Cir. 1993) (unpublished decision).

2. We granted the Appellant until November 27, 1995, to Show Cause why the Board should not dismiss VABCA-4740 as premature. Appellant responded on November 27, 1995, stating that "[w]hile we understand that the Contracting Officer's October 10, 1995 letter was not in the express form of a Contracting Officer's Final Decision, it, in essence, was a denial of the Claim."

3. While the October 9, 1995 submittal by the Contractor may be a claim, the Government's response of October 10, 1995 did not address the substantive merits of the claim, but rather, referred the claim to another office within the Department of Veterans Affairs for investigation. Given the facts before the Board, we conclude that October 10, 1995 letter from the Contracting Officer is not a final decision, and, in as much as 60 days has not expired from the date of the Contracting Officer's receipt of the claim, we conclude, accordingly, that we are without jurisdiction to consider the matter. Accordingly, the appeal of Suburban Middlesex Insulation, Inc., VABCA4740, is hereby dismissed without prejudice to the Appellant's right to appeal a denial of its claim.

**IT IS SO ORDERED**

**DATE: December 1, 1995**

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GUY H. MCMICHAEL III  
Chief Administrative Judge  
Panel Chairman

We Concur:

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MORRIS PULLARA, JR.  
Administrative Judge

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JAMES K. ROBINSON  
Administrative Judge